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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 148.

ERIC HASS,

Petitioner,

—against—

PEOPLE OF THE STATE OF NEW YORK.

PETITION FOR REHEARING.

EMANUEL REDFIELD,
Counsel for Petitioner,
60 Wall Street,
New York City.

THE COURT PRESS, N. Y. C.

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petition of Eric Hass by Emanuel Redfield his attorney respectfully shows:

That this is an application for a rehearing of the decision of this Court dismissing the appeal herein (Justices Black and Douglas, dissenting) on October 10, 1949. The dismissal was for want of a substantial federal question.

The purpose of this petition is to demonstrate fully that there is a substantial federal question. The jurisdictional statement is rather cryptic. Counsel was of the opinion that the federal question was so clear and substantial that there was no question of a review. Therefore, extreme brevity in presentation was made.

Petitioner respectfully calls this Court's attention to the following: The ruling in this case by this

Court's rejection is squarely contrary to its previous holdings in cases such as *Lovell* v. *Griffin,* 303 U. S. 444; *Cantwell* v. *Connecticut,* 310 U. S. 296; and the recent *Saia* v. *City of Lockport,* 92 Law. Ed. 1087. In these cases it was ruled and except for the instant case, seems to be firmly established that the necessity of obtaining a permit from a local official, *ipso facto,* renders such necessity void. The only modification to the rule exists in cases where the law provides procedural safeguards against the unlimited discretion of the official. For instance, after the Lockport ordinance was stricken down, the City of New York which had a similar ordinance, amended its law to provide the manner by which permits may be obtained, conditions to be met and the obligation of the official to issue the permit, if the conditions are met.

The reason for the broad rule is a salutary one. It is to safeguard against the acts of the administrative official. It is to prevent him from becoming a censor. It is to prevent him from preventing the utterance of ideas unpopular to him or to others.

This Court has gone so far in the protection of speech against the requirements of permits that it has stricken down permit ordinances even when the official has *not* abused the power. *Thornhill* v. *Alabama,* 310 U. S. 88. This Court held that the potentialities of censorship existed. That was sufficient reason for protection. In such cases it was held from experience that local public officials reject applications for speech permits because their views are unpopular, but justify their reasons behind a screen that has constitutional approval. Human beings are not endowed with faculties to pry into the minds for the hidden motives of officials.

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Let us apply these principles to the instant case. We will assume, at worst, the Court of Appeals has placed a clear construction on the ordinance in that by Chapter 21, Section 532 of the Charter of the City of New York, the limits of the jurisdiction of the commissioner extends to maintain the beauty of the parks and that he has no power to suppress the publication of facts or opinions (Jurisdictional Statement, p. 7, lower half). Nevertheless, this construction is merely surplusage and circuitous. It is no different from the ordinances in the *Lovell, Griffin* and similar cases. In all those cases the implied construction of the ordinance is that it is not to be used to suppress opinions. No official would admit otherwise. The implication always exists that speech is not to be thwarted. That is always the excuse given, along with the suggestion that the ordinance has never been used for such purposes.

But the question still remains not what has been done, but what can be done under the ordinance *Thornhill* v. *Alabama* (above). Even under the construction of the Court of Appeals an applicant for a permit can be denied it by the commissioner. He can be refused it with the excuse that he will destroy foliage, in the same manner as previously handbills were forbidden because they would litter the street. Yet this Court in *Schneider* v. *State*, 308 U. S. 147, held that littering was incidental. In so ruling this Court followed its decision in *Hague* v. *C. I. O.*, 307 U. S. 496, upholding the right to use the streets and parks for public speech without interference from a public official who required a permit for speech.

In those cases "littering of the street" was a rubric used to cover all situations. Now, from this case, the rubric will become "destroying foliage".

It is not unreasonable for one to argue that persons are entitled to enjoy the repose of woodland freed from daily harangues. Few will deny the public that convenience. Yet the interest may be balanced, with that of freedom of speech. Both can be accommodated at different places and times. But an ordinance must be framed with particularity so that the official may be governed by it, such as was suggested by Mr. Justice Douglas in the *Saia* case and which was followed by the City of New York.

Counsel also suggests to this Court that those of us at the Bar who are frequently engaged in free speech cases have been placed in confusion by the ruling in this case, since it is an about-face and at variance with the cases cited. Now we are not certain whether *Saia* v. *Lockport* and the cases cited in that case are still the law of the land. A clarification toward that end will serve the Bar and the public as well.

Dated: New York, N. Y., October 18, 1949.

Respectfully submitted,

ERIC HASS

By EMANUEL REDFIELD,
Counsel for Petitioner.

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Certificate of Counsel.

I, Emanuel Redfield, counsel for the above named petitioner, do hereby certify that the foregoing petition and application is presented in good faith and not for delay.

EMANUEL REDFIELD,
Counsel for Petitioner.